

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**ATTACHMENT NO. 2****INITIAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS**

Title 8, Division 1, Chapter 4, Subchapter 7, Article 69, Section 4530 of the
General Industry Safety Orders

Bakery Ovens-Inspections**SUMMARY**

The Occupational Safety and Health Standards Board (Board) initiates this rulemaking as the result of a Request for New of Change in Existing Safety Order (Form 9), submitted by the Division of Occupational Safety and Health (Division), dated August 21, 2007, to revise Section 4530(a) in the General Industry Safety Orders (GISO). The Division stated that Title 8, Section 4530, bakery oven standards, does not contain an oven inspection/maintenance requirement that is contained in 29 CFR 1910.263(l)(9)(ii). This federal requirement stipulates that bakery oven safety devices are to be inspected by the employer at intervals not less than two times per month and by the oven manufacturer at least once a year. California Labor Code Section 142.3(a)(2) requires the Board to adopt standards that are at least as effective as those promulgated by federal OSHA.

Existing Section 4530 contains general bakery oven requirements and requirements for fired and recirculating ovens. Existing Section 4530(a) contains general requirements for bakery ovens that include requirements for safe oven placement, oven safety devices, and gas oven lock-out requirements. Currently, Section 4530 does not contain requirements for periodic inspections of the oven's safety devices as mandated by the aforementioned Federal OSHA requirements. Board staff agrees with the Division that Title 8, Section 4530 needs to be amended to ensure that Title 8 standards are at least as effective as the counterpart federal regulation for this issue.

Therefore, this proposal consists of language derived from 29 CFR 1910.263(l)(9)(ii) to address this issue. Board staff's proposal deviates somewhat from the Division's recommended language and the federal standard by requiring that a qualified person, a term defined in GISO, conduct the monthly inspections rather than an "especially appointed, properly instructed employee," which is language unfamiliar to Title 8 and California employers. The term "qualified person," as defined in Section 3207, is well understood. Board staff believes this deviation is justified since the term "qualified person" is equivalent to "especially appointed, properly instructed employee." Section 3207 defines "Qualified Person, Attendant or Operator"

as a person designated by the employer who by reason of his training and experience has demonstrated his ability to safely perform his duties and, where required, is properly licensed in accordance with federal, state, or local laws and regulations.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 4530. Bakery Ovens.

Existing Section 4530 contains standards addressing general bakery oven requirements that include safety devices for fired and recirculating bakery ovens.

An amendment is proposed to add language in subsection (a), as new subsection (a)(2), to require that all oven safety devices be inspected at least two times per month by a qualified person and at least once a year by a representative from the bakery oven manufacturer.

This proposal adds requirements substantially similar to the oven inspection requirements of 29 CFR 1910.263(l)(9)(ii). The current California standard has no inspection requirements. Therefore, this proposal is necessary to render the inspection requirements for bakery ovens in Section 4530 “at least as effective as” 29 CFR, Section 1910.263(1)(9)(ii) and will provide employees with the added safety that is likely to result from a regimen of inspections.

In addition, existing subsections (a)(2) through (a)(4) are proposed to be renumbered to include new subsection (a)(2). Furthermore, an editorial revision is proposed to renumbered subsection (a)(5) to replace the term “men” with “a person” to eliminate gender specific language.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board, dated August 21, 2007, DOSH Form 9-58, Section 4530, Bakery Ovens.
2. Federal Register, June 27, 1974, Washington D.C., Department of Labor, Occupational Safety and Health Administration, Occupational Safety and Health Standards, Volume 39, No. 125, Part II, 29 CFR 1910.263, Bakery Equipment.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DOCUMENTS INCORPORATED BY REFERENCE

None.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC
IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

With regard to the bi-monthly inspection requirement, there would be no significant cost impact to State agencies that operate bakery ovens, as these inspections would generally be conducted by the employees currently maintaining the ovens. There will be an additional cost to State agencies that operate bakery ovens related to the annual inspections conducted by the manufacturer's representative. In conversations with manufacturers of bakery ovens, the cost of the annual inspection generally ranges from \$80 to \$160 depending on the type of the oven and travel distance to the oven site. Employers who operate bakery ovens will typically enter into a service contract with the manufacturer to conduct periodic inspections as required by the proposal. Bakery ovens are expensive pieces of equipment ranging in price from tens of thousands of dollars for small independent bakeries to millions of dollars to large scale commercial bakeries. Besides the cost of the ovens, the cost to operate these ovens in terms of energy consumption can be significant. Proportionally, the cost of the annual inspection is insignificant compared to these other costs. The required inspections are intended to prevent a catastrophic event such as an oven fire which could result in serious employee injury or death and major property loss, not to mention loss of production time.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. (Also, see Costs or Savings to State Agencies.)

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, the standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment will affect small business as defined in Government Code Section 11342.610 with respect to the annual inspection requirement. However, this impact is proportionally insignificant. (See Costs or Savings to State Agencies.)

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.